Supreme Court of the United States

OCTOBER TERM, 1961.

No. 264

HALLIBURTON OIL WELL CEMENTING COMPANY,
Appellant,

versus

JAMES S. REILY, COLLECTOR OF REVENUE, STATE OF LOUISIANA (Since Succeeded by Robert L. Roland, Who Was Duly Succeeded by Roland Cocreham),
Appellee.

On Appeal from the Supreme Court of the State of Louisiana.

AMICUS CURIAE BRIEF BY ATTORNEY FOR SPERRY RAND CORPORATION

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AMICUS CURIAE.

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May It Please The Court:

STATEMENT OF THE ISSUE.

The gravamen of the appeal is whether or not the State of Louisiana may levy its tax on property acquired outside of Louisiana and brought into Louisiana when the sales tax levied by the same statute is not imposed on a like acquisition within Louisiana.

SPERRY RAND CORPORATION IS CONFRONTED WITH A RELATED ISSUE.

Sperry Rand Corporation is a Delaware corporation, qualified to do business in the State of Louisiana. One of its operating divisions is its Remington Rand Division, and for the purpose hereof this corporation shall be referred to hereinafter as Remington Rand. Among other business activities, Remington Rand itself manufacturers outside of Louisiana office equipment, which property of its own it brings into Louisiana and rents to customers. It concedes to be due and has always paid the rental tax levied upon rentals of such property by the Louisiana Sales and Use Tax[1], particularly by the levying section thereof which applies to sales, use, rentals and services.

Appellee's regulations for the administration of the statute provide in pertinent part, in Article 2-4 thereof, that the tax is computed on:

> "* * * the gross receipts or gross proceeds without any deduction whatsoever for expenses incident to the conduct of business * * *."

and

> "* * * the gross receipts or gross proceeds derived from the lease or rental of accounting machines, office equipment, * * * and equipment of all kinds, as well as other articles of tangible personal property * * *."

[1] LSA-R.S. 47:301, et seq.; Appellant's Jurisdictional Statement, page 69, et seq.

[2] LSA-R.S. 47:302 B; page 77, Appellant's Jurisdictional Statement. See also LSA-R.S. 47:301(7); pages 72-73, Appellant's Jurisdictional Statement.

are within the provisions of the act.

Tax controversy about this rental property began with Appellee's notice to Remington Rand of a proposed use tax assessment[3] in addition to (and not in lieu of) the rental tax being paid as aforesaid. The precise base of such use tax levy has not been disclosed by Appellee, as the proposed assessment merely specifies a use tax due of $4,710.98 for the period January 1, 1957 through March 31, 1960, plus interest.[4] Subsequent periods and rental transactions therein are implicit also in the dispute, with no disclosure from appellee to this time what tax amount it claims therefor.

In addition to the statutory basis for its notice,[5] appellee's main claim originally pegged upon a Louisiana appellate decision under the same statue[6] that the purchase outside of Louisiana and importation of a fleet of automobiles into Louisiana for rental therein subjected the owner to the use tax as well as the rental tax which it was voluntarily paying.

The factual distinction between an owner making an out-of-state purchase for importation and rental of the same property and Remington Rand's actual manufacture of its own property elsewhere and importing it into Louisiana for rental seems plainly obvious. As inapposite as is the decision in *U-Drive-It Car Company*,

[3] Pursuant to LSA-R.S. 47:302 A(2); see page 77, Appellant's Jurisdictional Statement.

[4] Louisiana's Constitution provides a three-year period of prescription (limitation) for the collection of such taxes. Vol. 3, West's LSA Constitution, Article 19, section 19, page 421.

[5] Section 302 A(2), supra.

[6] State of Louisiana v. U-Drive-It Car Company, Inc., 79 So. 2d 500, (Court of Appeal, Orleans, 1955), rehearing denied; certiorari denied.

supra, nevertheless its combination with the decision here on appeal pictures clearly the propinquity of Remington Rand's position with that of Appellant.[7]

Even more closely are these positions allied by application to Remington Rand of the Collector's stipulation as to Appellant.[8] This is the true nexus among Appellant, Remington Rand, other amici curiae and still others similarly situated. Stated plainly, if Remington Rand's place of manufacture of its rental property were situated in Louisiana, its tax base would be entirely identical[9] with that of any other domestic manufacturer of property for similar intrastate use.[10]

The position of the Collector thus thrusts against all who manufacture their own property outside of Louisiana and bring it into that state to occupy, as the Collector would have it, a tax climate entirely different from that enjoyed by a local manufacturer. Shearing its verbiage to the result, the Louisiana Supreme Court's decision impels the tax directly at the out of state purchase and movement of its across the state line.

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[7] Remington Rand and the Collector have executed bilateral waivers of the Constitutional prescriptive period, supra, under which this dispute pends, in the broadened trajectory of the State's attempted reach, until decision of Halliburton's case here on appeal.

[8] Par. IV, Record, p. 58; Appellant's Jurisdictional Statement, pages 10-11.

[9] State v. J. Watts Kearney & Sons, 181 La. 554, 160 So. 77; Claiborne Sales Co. v. Collector, 233 La. 1061, 99 So. 2d 345.

[10] Fontenot v. S.E.W. Oil Corporation, 232 La. 1014, 95 So. 2d 638, is not pertinent to Remington Rand's position at this stage of its controversy with the State of Louisiana, because of fact differences and lack of duality of taxes imposed.

NECESSITY FOR THIS COURT'S DECISION OF THE ISSUE.

We believe that the Louisiana Supreme Court's attempt to distinguish *State of Alabama v. Bay Towing and Dredging Co., Inc.*,[11] is incorrect. That decision seems to us to posture essentially the same issues as are involved here in a correct constitutional resolution thereof.[12] Otherwise there would not exist the "equality" which this Court has mandated for there to be constitutional validity of such a tax.[13] We see no decision of this Court, though, which says with specifity that there is need for equality between sales and use taxes so as to avoid squarely discrimination against interstate commerce. In that respect *Henneford v. Silas Mason, supra*, in no way justifies a use tax broader than its related tax impinging its heavier impact upon interstate commerce. Such a burden appears by analogy to be illegal.[14] The decision appealed from involves an encroachment upon fundamental principles in such an increasingly important national business climate as to outreach the boundaries of Appellant's single interest. The issues here, therefore, necessitate enunciation of guidance which only this Court can express.

CONCLUSION.

It is submitted that the issues presented by the appeal are very substantial, involve far reaching and nationally

[11] 265 Ala. 282, 90 So. 2d 743.
[12] See Appellant's Jurisdictional Statement, pages 8, 12 et seq.
[13] Henneford v. Silas Mason Company, 300 U.S. 577.
[14] Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450; Memphis Steam Laundry v. Stone, 342 U.S. 389; Walling v. Michigan, 116 U. S. 446.

important questions of serious constiutional import not squarely passed upon by this Court heretofore, all in a climate of judicial conflict among several of the states. We join, therefore, with Appellant in requesting that this cause be fully heard, considered and determined.

Respectfully submited,

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(Attorney for Sperry Rand Corporation),
AMICUS CURIAE.

PROOF OF SERVICE.

I, Cicero C. Sessions, Amicus Curiae herein, and a member of the bar of the Supreme Court of the United States, do hereby certify that I have served a copy of this brief on Honorable Roland Co reham, Collector of Revenue of the State of Louisiana (successor in office to James S. Reily and Robert L. Roland, prior parties hereto), Appellee in connection with this appeal, by mailing same in the United States mail, postage prepaid, to his counsel of record, Honorable Chapman L. Sanford, at his office in the Capitol Annex Building, Baton Rouge, Louisiana, and that I have served a copy of this brief on Halliburton Oil Well Cementing Company, Appellant in connection with this appeal, by mailing same in the Untied States mail, postage prepaid,

to its counsel for record, Messrs. C. Vernon Porter and Benjamin B. Taylor, Jr., at their office at 1100 Louisiana National Bank Building, Baton Rouge, Louisiana; all on this 17th day of August, 1961.

CICERO C. SESSIONS.